

FARAD CONTINUATION SHEET No.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.**

APPEAL FROM ORDER NO. 786 OF 2004.

Office Notes,Office :
Memoranda of Coram, : Court's or Judge's orders
appearnaces,Courts's :
orders or directions :
and Registrar's orders. :

N.V.Walawalkar with J.Xavier
for the appellant.

C.R.Dalvi for the respondent.

CORAM: V.C.DAGA,J.

DATED: 16th September 2004.

P.C.:

. During the course of hearing,
the undisputed fact brought to my notice
is that the suit structure has already
been demolished. In this view of the
matter, Mr.Walawalkar, learned counsel
for the Municipal Corporation submitted
that the suit itself does not survive as
such it may be disposed of as infectious.

. Mr.Dalvi, learned counsel for
the respondent submitted that in view of
demolition of the suit structure what can
be done by this Court is only disposal of
the appeal holding it to be infructuous.
He further submitted that the suit

structure was demolished by some unknown persons with the help of Municipal officers, one Mukadam, one Engineer or Sub-Engineer and other persons, whose names the respondent does not know. According to the respondent, these officers were sitting in the office of Shiv Sena party and those officers colluded with these persons who demolished the suit structure. He, therefore, submitted that the respondent be permitted to reconstruct the suit structure.

. The allegations made in this behalf against the officers of the Corporation are absolutely vague. No details of the officers are to be found. No particulars are to be noticed. Mr. Walawalkar submitted that in absence of details it is not possible to make any enquiry. However, on whatever enquiry that he has made, he has come to know that not a single officer of the Corporation was present when the alleged demolition took place.

. Considering the fact that the suit structure has been demolished, no

permission of reconstruction can be granted unless respondent follows due procedure of law for the time being in force. Since the suit structure does not exist, present appeal has been rendered infructuous . The same is disposed of with no order as to costs.

. In the event respondent makes an application for reconstruction of suit structure, it would be open for the Municipal Corporation to consider the same on its own merits as expeditiously as possible in accordance with law.

. All the concerned to act on ordinary copy of this order duly authenticated by the Associate/ Personal Secretary of this Court.
